

IN THE STATE OF MICHIGAN
IN THE SUPREME COURT

DETROIT CAUCUS; ROMULUS CITY COUNCIL; INKSTER CITY COUNCIL; TENISHA YANCY, as a State Representative and individually; SHERRY GAY-DAGNOGO, as a Former State Representative and individually; TYRONE CARTER, as a State Representative and individually; BETTY JEAN ALEXANDER, as a State Senator and individually, Hon. STEPHEN CHISHOLM, as member of Inkster City Council and individually, TEOLA P. HUNTER, as a Former State Representative and individually; Hon. KEITH WILLIAMS, as Chair MDP Black Caucus and individually; DR. CAROL WEAVER, as 14th Congressional District Executive Board Member and individually; WENDELL BYRD, as a Former State Representative and individually; SHANELLE JACKSON, as a Former State Representative and individually; LAMAR LEMMONS, as a Former State Representative and individually; IRMA CLARK COLEMAN, as a Former Senator & Wayne County Commissioner and individually; LAVONIA PERRYMAN, as representative of the Shirley Chisholm Metro Congress of Black Women and individually; ALISHA BELL, as Chair of the Wayne County Commission and individually; NATALIE BIENAIME, as a Citizen of the 13th District; OLIVER COLE, as a resident of Wayne County; ANDREA THOMPSON, as a resident of Detroit; DARRYL WOODS, as a resident of Wayne County, NORMA D. MCDANIEL, as a Resident of Inkster; MELISSA D. MCDANIEL, as a resident of Canton, CHITARA WARREN, as a resident of Romulus; JAMES RICHARDSON, as a resident of Inkster, ELENA HERRADA, as a resident of Detroit

Supreme Court Case No. 163926

Jurisdiction: Original Pursuant to Mich. Const. Art. 4, §6(19).

FIRST AMENDED VERIFIED COMPLAINT

Plaintiffs,

v.

AYAD LAW, P.L.L.C.
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DETROIT, MICHIGAN 48226
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MICHIGAN INDEPENDENT CITIZENS
REDISTRICTING COMMISSION,

Defendant.

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FIRST AMENDED VERIFIED COMPLAINT

NOW COMES, the above-named Plaintiffs (hereinafter "Plaintiffs"), by and through their attorneys at Ayad Law, PLLC, and hereby make the following complaint:

INTRODUCTION

1. On November 6, 2018, Michiganders voted to amend the Michigan Constitution of 1963 to create the Michigan Independent Citizens Redistricting Commission (hereinafter "Defendant" or "the Commission").
2. The amendment added, in pertinent part, the following language to Michigan's Constitution:

(13) The commission shall abide by the following criteria in proposing and adopting each plan, in order of priority:

(a) Districts shall be of equal population as mandated by the United States constitution, and shall comply with **the voting rights act** and other federal laws.

...

(c) Districts shall reflect the state's diverse population and **communities of interest**. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. **Communities of interest do not include relationships with political parties, incumbents, or political candidates.**

Mich Const 1963, art 4, §6(13)(a) and (c) (emphasis added).

3. After being created, the Commission has maintained that its mission and vision are:

Mission: To lead Michigan's redistricting process to assure Michigan's Congressional, State Senate, and State House district lines are drawn fairly in a citizen-led, transparent process, meeting Constitutional mandates.

Vision: To chart a positive course for elections based on fair maps for Michigan today and for the future.

(See <https://www.michigan.gov/micrc/0,10083,7-418-92033---,00.html>, last visited January 3, 2022, emphasis in original.)

4. This Supreme Court has already ruled that the Commission failed in its self-stated mission of 'transparency' when on December 20, 2021, it ruled that the Commission had violated Michigan's Open Meetings Act and ordered the commission to make public the meetings they had been having in private.
5. On December 28, 2021, the Commission officially approved its redistricting maps (or "Plans") for the state of Michigan's Congressional, State Senate, and State House voting districts.
6. It is clear from the Commission's current proposed Plans that they will also be falling woefully short of their vision: "To chart a positive course for elections based on fair maps for Michigan today and for the future."
7. Pursuant to the Michigan Constitution of 1963, Article IV, Section 6(19) these Black Plaintiffs now challenge the three discriminatory and unlawful Plans of the Michigan Independent Redistricting Commission.

THE PARTIES

8. The Detroit Caucus is a group of Legislators from the Michigan House of Representatives that represent constituents within the City of Detroit.
9. The Romulus City Council is a legislative body of elected officials in the city of Romulus, MI.
10. The individual Plaintiffs are all, first and foremost, members of the Black community of Michigan and residents of Wayne County who stand to lose their ability to elect their chosen candidates into office:
 - a. The Detroit Caucus;
 - b. The Romulus City Counsel;
 - c. The Inkster City Council
 - d. State Representative and Detroit Caucus Chair, Tenisha Yancey
 - e. Former State Representative & Detroit Caucus Chair Sherry Gay-Dagnogo, M.Ed., DPSCD Board Member, resident of Detroit, Michigan;
 - f. State Representative Tyrone Carter
 - g. Senator Betty Jean Alexander, Senate District 5, resident of Detroit, Michigan;
 - h. Hon. Stephen Chisholm, Inkster City Council
 - i. Former State Rep. Teola P. Hunter, First Female Speaker *Pro Tem*, resident of Detroit, Michigan;
 - j. Hon. Keith Williams, Chair MDP Black Caucus, resident of Detroit, Michigan;
 - k. Dr. Carol Weaver, 14th Congressional District Executive Board Member, resident of Detroit, Michigan;

- l. Former State Representative Wendell Byrd, resident of Detroit, Michigan;
- m. Former State Representative Shanelle Jackson, resident of Detroit, Michigan;
- n. Former State Representative Lamar Lemmons, resident of Detroit, Michigan;
- o. Former Senator and Wayne County Commissioner Irma Clark Coleman, resident of Detroit, Michigan;
- p. Lavonia Perryman, The Shirley Chisholm Metro Congress of Black Women, resident of Detroit, Michigan;
- q. Alisha Bell, Wayne County Commissioner and Chair, resident of Detroit, Michigan.
- r. Natalie Bienaime, Citizen the 13th District, resident of Detroit, Michigan;
- s. Oliver Cole, Resident of Wayne County;
- t. Andrea Thompson, Resident of Detroit;
- u. Darryl Woods, Resident of Wayne County.
- v. Darryl Woods, as a resident of Wayne County;
- w. Norma D. Mcdaniel, as a Resident of Inkster;
- x. Melissa D. Mcdaniel, as a resident of Canton,
- y. Chitara Warren, as a resident of Romulus;
- z. James Richardson, as a resident of Inkster,
- aa. Elena Herrada, as a resident of Detroit

11. Defendant Michigan Independent Citizens Redistricting Commission (“MICRC”) is a permanent commission in the legislative branch of government. Const 1963, art 4, § 6(1).

JURISDICTION

12. The Court has original subject-matter jurisdiction over this action under Article IV, Section 6(19), of the Michigan Constitution of 1963.

13. The Court also has subject-matter jurisdiction under Section 217(3) of the Revised Judicature Act, MCL 600.217(3), and Michigan Court Rules 3.301(A)(1)(c) and (g) and Michigan Court Rule 3.305(A)(2).
14. The Court has general personal jurisdiction over Plaintiffs under Section 701(3) of the Revised Judicature Act, MCL 600.701(3).
15. The Court has general personal jurisdiction over the Commission under Section 2051(4) of the Revised Judicature Act, MCL 600.2051(4).

FACTUAL BACKGROUND

1. Michigan Redistricting Commission was sold to the Michigan voter as a means of reducing gerrymandering in the redistricting of Michigan's voter districts following the 2021 census. However, the idea of an impartial, non-discriminatory, non-racist redistricting plan has been shattered by the revelation of the Michigan Redistricting Commissions Plans.
2. The new US Congressional Plans, with their new voting district maps, were backed by only eight out of thirteen of the randomly selected voters who serve on the commission.
3. **Should the Plans for the US Congressional districts be adopted, it would completely eliminate the two majority-minority (Black) districts that currently run through the largest concentrated Black population in Michigan (Detroit). Instead, those districts would be apportioned into eight new districts comprised of eight small sections of the Black community in and around Detroit, each paired with a large section of a majority-non-Black suburb of Detroit (such as Birmingham and Bloomfield Hills).**
4. **Each of the new districts would then become majority-non-Black.**
5. **As non-Black voters tend to vote for non-Black candidates, Defendant's proposed US Congressional district Plans would reduce the chances of the Blacks of Michigan from getting one to two of their preferred US Congress candidates on the general election**

ballot down to zero; effectively blocking representation at the federal level for Black's in Michigan.

6. Similarly, Defendant's redistricting Plans would completely rob the Black minority of Michigan of its ability to elect their chosen representatives into the Michigan Senate, and halve the potential candidates they could elect to the Michigan House of Representatives.
7. This practice of splintering a majority-minority voter district is termed "dilution," is banned by the Michigan Constitution at article 4, §6(13)(a) and (c), and has long been banned by federal law pursuant to the Voting Rights Act of 1965.
8. The Voting Rights Act of 1965 was the first federal legislation to outlaw intimidation and other barriers to voting of African Americans and other racial minorities. Since that victory of the Civil Rights Movement, Black Americans have had the highest voting rate of any racial group in the nation.¹
9. The Commission's redistricting is a blatant and obvious "retrogression" of the national and Michigan Civil Rights Movement and sets-back the Black population of Michigan generations by undoing the hard-fought representation achieved by the Black community in Michigan over the last 70 years.
10. As the United States Supreme Court has stated:

The maintenance of existing district boundaries is advantageous to both voters and candidates. Changes, of course, must be made after every census to equalize the population of each district or to accommodate changes in the size of a State's congressional delegation. Similarly, changes must be made in response to a finding that a districting plan violates § 2 or § 5 of the Voting Rights Act, [52 USC §§ 10301, 10304(b, d)]. But the interests in orderly campaigning and voting, as well as in maintaining communication between representatives and their constituents, underscore the importance of requiring that any decision to redraw district boundaries—**like any other state action that affects the electoral process—must, at the very least, serve some legitimate governmental purpose.** See, *e.g.*, *Burdick v. Takushi*, 504 U.S. 428, 434, 440, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992);

¹ https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting_in_america.html

id., at 448–450, 112 S.Ct. 2059 (KENNEDY, J., joined by Blackmun and STEVENS, JJ., dissenting).

League of United Latin Am Citizens v Perry, 548 US 399, 448; 126 S Ct 2594, 2626–27; 165 L Ed 2d 609 (2006) (emphasis added).

11. **Here, the destruction of Black voters' ability to elect their preferred representatives and/or minority candidates could serve no legitimate government purpose, and therefore, it violates Michigan Constitution, the United States Constitution, and the Voting Rights Act of 1965.**
12. According to the U.S. Census Bureau, Blacks make up 15.21% of the population of the state of Michigan, Blacks living in Detroit accounted for 79.1% of the total population, or approximately 532,425 people as of 2017 estimates.²
13. According to the 2000 U.S. Census, of all U.S. cities with 100,000 or more people, Detroit had the second-highest percentage of Black people.³
14. Biden won the city of Detroit with 94% of the vote while Trump received 5%, according to the city of Detroit's election results.⁴
15. Yet statewide in Michigan, Biden defeated Trump by merely 50.6% to 47.9% (voter turnout was 71%).
16. These numbers make undeniably clear that the Black population of Michigan is a community of interest which has its own preferred political candidates and which, when districts are mapped fairly, has the power to elect the representatives of their choice.

² <https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,mi/PST045217>

³ Race and Ethnicity in the Tri-County Area: Selected Communities and School Districts; See also From a Child's Perspective: Detroit Metropolitan Census 2000 Fact Sheets Series. Wayne State University. June 2002. Volume 2, Issue 2. p. 1. Retrieved on November 10, 2013.

⁴ <https://www.freep.com/story/news/politics/elections/2020/11/06/joe-biden-detroit-michigan-vote-election-2020/6168971002/>

17. Michigan voters supported establishing an Independent Citizens Redistricting Commission in 2018 on the premise it would eliminate “gerrymandering” in the creation of legislative and congressional districts in the State.
18. Initially, the Independent Redistricting Commission stated that they would work to develop fair, non-partisan leaning legislative and congressional districts. Secondly, and more strongly, the Commission indicated they would respect and protect communities of interest.
19. From review of their draft plans, it is clear that the Commission has failed in both of these regards.
20. The largest community of interest in Michigan is the Black population.
21. Republicans are not a community of interest. Mich Const 1963, art 4, §6(13)(c).
22. Democrats are not a community of interest. Mich Const 1963, art 4, §6(13)(c).⁵
23. Although the Commission indicated they planned to protect communities of interest, they produced a US Congressional Plan that divided Detroit into eight pieces.
24. Of those eight pieces, not one district as a whole contained Michigan's largest Black populous, the City of Detroit, but instead, sections of Detroit's Black community are apportioned to other, majority-White polities including: Bloomfield Hills, Birmingham, Canton, Farmington, Madison Heights, New Baltimore, Sterling Heights, and Clinton Township.
25. The redistricting plans of the Michigan Independent Redistricting Commission are bipartisan **racial** gerrymandering which, if implemented, would unlawfully reduce the voting power of minority racial groups to elect the candidate of their choosing.

⁵ It is highly important to note here that for purposes of voting district boundaries, compliance with the Michigan Constitution and federal law requires consideration of data from primary elections (which Defendant did not use), not general elections, as not every Democrat candidate is/was the Black community's preferred candidate in the primaries.

26. The reduction of majority-minority districts from the plans previously adopted in 2011 can be plainly seen by the results of the redistricting on the representation of Black voters and the citizens of City of Detroit.

Examples of Dilution: 2011 to 2021⁶

27. Congressional Map

- 2011 Current Map contains 2 (two) majority Black districts
- 2021 Plans contain 0 (zero) majority Black districts

28. State Senate Map

- 2011 Current map contain 4 (four) majority Black districts
- 2021 Plans contain 0 (zero) majority Black districts

29. State House Map

- 2011 Current map contains 12 (twelve majority) Black districts
- 2021 Plans contain 6 (six) majority Black districts

30. Defendant's current proposed plans have been denounced by an entire department of the government of Michigan, in that the Michigan Department of Civil Rights released a memorandum stating and showing that the proposed maps of Defendant unlawfully dilute the voting power of Blacks in the state of Michigan. See **Exhibit A, Michigan Department of Civil Rights December 9, 2021 Memorandum: Analysis of MICRC's Proposed Maps.**

31. An expert hired by Defendant also admits that they were lacking the proper data regarding Black voters in Michigan when they drew up the Plans: "Lisa Handley, one of the

⁶ Exhibit A, Michigan Department of Civil Rights December 9, 2021 Memorandum: Analysis of MICRC's Proposed Maps.

commission's experts... noted a lack of data to discern how Black candidates may be affected by white voters in primaries, which decide many races."⁷

32. That data was obtainable, and was absolutely necessary to the Commission in order for it to be able to comply with the Michigan Constitution and federal law, as even the law of the Voting Rights Act of 1965 requires the map-makers to consider certain datapoints that Defendant apparently did not have.

33. In fact, Defendant attempted to extend their deadline to submit their final Plans multiple times, and cited as one reason that they lacked the data required to properly fulfil their legislative purpose.⁸

34. Defendant never published the guidelines, protocols, and procedures that it used in formulating its Plans and, it is clear from the claims of their own expert of the lack of required data, that they did not use the necessary guidelines, protocols, and procedures in creating their current Plans.

35. The current proposed plans, which almost completely politically silence the Black community of interest, could be easily remedied in short order.

36. Owing to the current Plans boundaries surrounding the largest concentration of Blacks in the state of Michigan (the Detroit area), each of the three Plans could have their district borders in and around Detroit tweaked just a relatively small amount in a way that would completely undue the Defendant's dilution of the Black vote in Michigan while leaving the rest of the Plans 100% intact.

⁷ <https://www.usnews.com/news/best-states/michigan/articles/2022-01-03/black-lawmakers-to-sue-to-block-michigan-redistricting-maps>

⁸ <https://apnews.com/article/redistricting-census-2020-government-and-politics-health-michigan-47512ce8963ac0097a9139dca98fa2a3>

37. Throughout the redistricting process, the Michigan Independent Redistricting Commission has been opaque with the public in regards to its compliance with the Voting Rights Act, in contravention of its mandate under the Michigan Constitution to perform its “duties in a manner that is impartial and reinforces public confidence in the integrity of the redistricting process. The commission shall conduct all of its business at open meetings.” Mich. Const. Art. 4, § 6(10).
38. In fact, this honorable Court recently ruled that a recording of MICRC’s October 27, 2021 meeting, during which two (2) memoranda were discussed involving the proposed maps compliance with the Voting Rights Act, must be disclosed to the public because the meeting involved the development of the redistricting map.⁹
39. This court further ruled that seven (7) additional memoranda out of 10 must be disclosed to the public as “supporting materials” under Const 1963, art 4, § 6(9).¹⁰

COUNT I
Violation of Mich Const 1963, art 4, §6(13)(a) and (c):
Dilution of Minority Voting Power

40. Plaintiffs reallege the prior paragraphs as if restated fully hereunder.
41. The Michigan Constitution of 1963 provides:
- (13) The commission shall abide by the following criteria in proposing and adopting each plan, in order of priority:
- (a) Districts shall be of equal population as mandated by the United States constitution, and shall comply with the voting rights act [of 1965] and other federal laws.
- Mich Const 1963, art 4, §6(13)(a) (emphasis added).
42. The Voting Rights Act of 1965 holds, in pertinent part:
- No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision

⁹ Mich Sup. Ct. Docket No. 163823

¹⁰ *Id.*

in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color...

52 USC § 10301.

43. In determining whether the Voting Rights Act statute has been violated, this Court follows "the guidance of the United States Supreme Court, [as] stated in *Thornburg v. Gingles*, 478 U.S. 30, 43–46, 106 S.Ct. 2752, 2762–2764, 92 L.Ed.2d 25 (1986)..." *In re Apportionment of State Legislature-1992*, 439 Mich 715, 735; 486 NW2d 639, 650 (1992).
44. In *Thornburg v. Gingles*, 478 U.S. 30, 43–46, 106 S.Ct. 2752, 2762–2764, 92 L.Ed.2d 25 (1986), Supreme Court of the United States has held that a successful Section 2 vote dilution claim has two components. First, a plaintiff must satisfy three preconditions by showing: (1) that the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district": (2) that the minority group is "politically cohesive": and (3) that bloc voting by other members of the electorate usually defeats the minority-preferred candidates. Satisfaction of these three preconditions is necessary but not sufficient to establish liability. Second, "[i]f these three preconditions are met, the district court must then examine a variety of other factors to determine whether, under the totality of the circumstances, the challenged practice impairs the ability of the minority voters to participate equally in the political process and to elect a representative of their choice." As stated in *Gingles*, 478 U.S. at 36-37, additional "objective factors" used in determining the "totality of circumstances" surrounding an alleged violation of Section 2 of the Voting Rights Act include (but are not limited to) the extent to which the members of the minority group bear the effects of discrimination in areas like education, employment, and health, which hinder effective participation, is one measure.

45. (1) The Black citizens of the City of Detroit are a minority group that is “sufficiently large and geographically compact to constitute a majority in a single-member district” as its population is 77.7% Black as per the 2020 census.
46. (2) The Black citizens of the City of Detroit are “politically cohesive” as is shown by their voting record where Detroit Black persons account for 79.1% of the total population of Detroit.¹¹ Biden won the city of Detroit with 94% of the vote while Trump received 5%.¹² Yet statewide in Michigan voter turnout was 71% and Biden defeated Trump by merely 50.6% to 47.9%, meaning that it was the Detroit Black community who, voting as a cohesive group, won the Presidential election for President Joseph Biden in this State and, potentially, the Country.
47. (3) Bloc voting by other members of the electorate usually defeats the minority-preferred candidates: Until the 1954 election of Charles Diggs in the old 15th District (13th today) followed by the election of John Conyers 10 years later in 1964 in the old 1st District (14th today) Detroit’s majority-minority community could not elect a Congressional candidate of their choice.
48. The Black citizens of the City of Detroit bear the effects of discrimination in the area of education:
- bb. In the city of Detroit the majority of the residents in the suburb area are predominantly White, while in the actual city majority of the residents are Black.¹³
- cc. As of the mid-2000's, school funding per pupil in Wayne County (where Detroit is located) was approximately \$930.33, the lowest in the State. The second highest

¹¹ <https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,mi/PST045217>

¹² <https://www.freep.com/story/news/politics/elections/2020/11/06/joe-biden-detroit-michigan-vote-election-2020/6168971002/>

¹³ Checkoway, Barry; Lipa, Todd; Vivyan, Erika; Zurvalec, Sue (2017). "Engaging Suburban Students in Dialogues on Diversity in a Segregated Metropolitan Area". Education and Urban Society. Sage Journals. 49 (4): 388–402.

was \$1,239.47 per pupil, in Macomb County, almost 50% more than that of Wayne County and far below the average for Southeastern Michigan of \$1,807.17.¹⁴

dd. Detroit public schools have high illiteracy rates and low academic performance compared to cities across the United States, with Detroit "eighth graders scor[ing the] lowest in math and reading in the nation."¹⁵

ee. According to the National Institute for Literacy, 47% (200,000) of adults in Detroit are functionally illiterate, and half of the 200,000 adults do not have a high school diploma or GED, showing that the lack of these skills learned in an academic setting is generationally embedded into different groups of society.

49. The Black citizens of the City of Detroit bear the effects of discrimination in the area of employment:

ff. Detroiters have a lower employment rate compared to others living in Wayne County and those in neighboring counties such as Macomb and Oakland. In July 2020, unemployment in Detroit reached nearly 40 percent.¹⁶ This is much higher than the national unemployment average of even The Great Depression nearly a century ago.¹⁷

gg. As of 2016, Detroit's poverty rate was 35.7%, with a median household income of just over \$28,000.¹⁸

¹⁴ D., Rollandini, Mark. Michigan intermediate school districts: funding and resource allocation. p. 22.

¹⁵ Rosenbaum, Mark (2018-01-30), The Miseducation of America, Center for Political Studies (CPS).

¹⁶ Wileden, Lydia. 2020. "employment Dynamics in Detroit During the COVID-19 Pandemic." Detroit Metro Area Communities Study, University of Michigan. <https://detroitssurvey.umich.edu/wp-content/uploads/2020/08/Unemployment-August-2020.pdf>.

¹⁷ Rashawn Ray, Jane Fran Morgan, Lydia Wileden, Samantha Elizondo, and Destiny Wiley-Yancy; Examining and Addressing COVID-19 Racial Disparities in Detroit; The Brookings Institution, p. 14.

¹⁸ Williams, Corey (14 September 2017). "Census Figures Show Drop in Detroit Poverty Rate". U.S. News.

50. The Black citizens of the City of Detroit bear the effects of discrimination in the area of health:

hh. Because of the legacies of underinvestment, redlining, jobs without benefits, poor or nonexistent and culturally incompetent health care, Black residents are less likely to be able to transcend the challenges presented by COVID-19 and are more likely to contract and die from the virus.¹⁹

ii. In Detroit, Black people represent a comparable over 75 percent of known COVID-19 diagnoses by race, yet account for a disproportionate nearly 90 percent of deaths.

Id.

51. Therefore, according to the analysis handed down in *Thornburg v. Gingles*, 478 U.S. 30, 43–46, 106 S.Ct. 2752, 2762–2764, 92 L.Ed.2d 25 (1986), the redistricting Plans approved by Defendant violate the Voting Rights Act of 1965 (52 USC § 10301) by implementing impermissible dilution of the Black vote in Michigan. As the Plans violate the Voting Rights Act, they also violate the Michigan Constitution at article 4, §6(13)(a) and (c).

COUNT II Declaratory Action

52. Plaintiffs reallege the prior paragraphs as if restated fully hereunder.

53. The Court has the power to enter declaratory judgments. MCR 2.605(A)(1).

54. A case of actual controversy exists between these parties as Plaintiffs will imminently have their rights under the Michigan Constitution, the United States Constitution, and federal law (the Voting Rights Act of 1965) violated and be effectively completely disenfranchised.

¹⁹ Rashawn Ray, Jane Fran Morgan, Lydia Wileden, Samantha Elizondo, and Destiny Wiley-Yancy; Examining and Addressing COVID-19 Racial Disparities in Detroit; The Brookings Institution, p. 1.

55. Guidance is needed by the Court to assist the parties in their conduct going forwards, so that Plaintiffs and the entire Black community of Michigan do not suffer the egregious and inexcusable injury of being racially discriminated against, disenfranchised, and having their legal, political, and civil rights eroded in one fell swoop.
56. The case in controversy is within the jurisdiction of this Court as, were the rights at issue violated, this Court would have original jurisdiction to hear causes of action arising out of those violations pursuant to Mich Const 1963, art 4, §6(19).
57. Specifically, Plaintiff requests a declaration from this Court that Defendant's proposed Michigan's Congressional, State Senate, and State House district voter districts Plans are unconstitutional and unlawful as they do not comport with the requirements of the Voting Rights Act of 1965 and the Michigan Constitution of 1963, article 4, §6(13)(a)-(c).

CONCLUSION AND RELIEF REQUESTED

The new voting district maps drawn by the Commission will thwart the Black Civil Rights Movement that this nation is famous for; that this nation is proud of. Should this Court not stop the Defendant from implementing their Plans, the Black voters of Michigan will be cast backwards in time to the days before Civil Rights heroes like Martin Luther King, Jr. and Rosa Parks led the fight for the representation that the Black community of Michigan currently has. The community of interest that is the Detroit Black community, will go from one that can unite to become powerful enough to win the United States presidency for their chosen candidate to one that cannot even elect state congress persons and senators; no matter what their voter turnout.

Under the Voting Rights Act of 1965, and therefore, the Michigan Constitution, it does not matter what the intentions of Defendant's members were, only what the effects of their redistricting will be. The effects are clear: By breaking the majority-Black US Congressional districts into eight voter districts from its previous two voter districts, it will dilute the vote of the Black community

in Michigan into meaninglessness. Similarly, the Plans for the Michigan Senate and Michigan House of Representatives inexcusably reduce the ability of Black voters to be represented in this state and nationally. The Michigan Legislature was able to create voting districts with majority-Black districts in 1980, 1990, 2000, and 2010. Defendant's Plan for the US Congressional districts, the number of majority Black districts would be reduced from two to zero; under the State Senate Plans, from four to zero; and under the State House Plans, from twelve to six. That is a total of 18 majority-minority districts reduced to just six. In 1980, 1990, and 2000, partisan Michigan legislatures were able to draw up Plans which gave consideration (and majority-Black districts) to Michigan's Black community and there is no reason that the newly created should not have done the same.

The Commission was supposedly created to assure that the Voter Rights Act of 1965 was not violated. Unfortunately, that is exactly what is happening here. As the Voter Rights Act assures that majority-minority districts are not to be diluted in newly redrawn districts so that minority communities cannot elect their candidates of choice. This map falls far short of such mandates under the Voter Rights Act and, if this Court does not act decisively to curb Defendant's ill-made Plans, then Black Michiganders, and the Black community everywhere, will suffer an egregious and despicable injury. As the late Martin Luther King, Jr. one said: "Injustice anywhere is a threat to justice everywhere." This Honorable Court should act swiftly to save the State of Michigan from the shame and embarrassment that will be associated with Defendant's redistricting Plans.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgement in their favor against Defendant and issue an order containing the following relief:

- a) Declaring that Defendant's currently proposed redistricting plans violate the Michigan Constitution of 1963, art 4, §6(13)(a) and (c) and the Voting Rights Act of 1965 by impermissibly diluting the Black voting power in Michigan;

- b) Ordering that Defendant be required to redraw their redistricting plans in accordance with the Michigan Constitution of 1963, art 4, §6(13)(a) and (c) the order of this Court;
- c) Awarding reasonable attorneys fees pursuant to Michigan Constitution of 1963, art 4, §6(5), (13)(a), and 52 U.S.C. § 10310(e); and
- d) Any and all such other relief that this Court deems just and equitable including any tolling of limitations periods necessary to accomplish justice.

Respectfully submitted;

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Dated: January 10, 2022

Verifications on following pages.

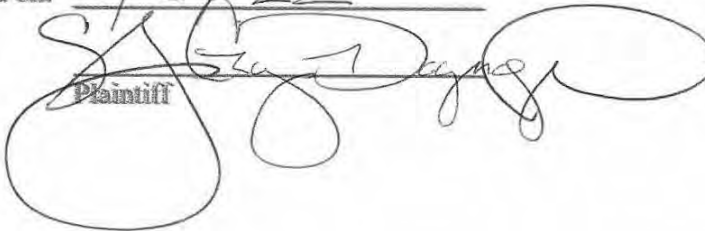
VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on:

1/5/22

Signed:


Plaintiff

AYAD LAW, P.L.L.C.
649 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226
P: (313) 983-4666 | F: (313) 983-4665

RETRIEVED FROM DEMOCRACYDOCKET.COM

AYAD LAW, P.L.L.C.
 645 Griswold St., Ste. 2202
 DETROIT, MICHIGAN 48226
 P. (313) 983-4600 | F. (313) 983-4665

WHEREFORE, Plaintiff requests that this Honorable Court enter judgement in his favor against Defendant and issue an order containing the following relief:

- a) Declaring that Defendant's currently proposed redistricting plans violate the Michigan Constitution of 1963, art 4, §6(13)(a) and (c) and the Voting Rights Act of 1965 by impermissibly diluting the City of Detroit and majority Black votes of Detroiters;
- b) Declaring that Defendant's currently proposed redistricting plans violate the Michigan Constitution of 1963, art 4, §6(13)(a) and (c) and the Voting Rights Act of 1965 by impermissibly retrogressing the voting power of Blacks of the City of Detroit;
- c) Ordering that Defendant be required to redraw their redistricting plans in accordance with the Michigan Constitution of 1963, art 4, §6(13)(a) and (c) and the Voting Rights Act of 1965 and the order of this Court; and
- d) Any and all such other relief that this Court deems just and equitable including any tolling of limitations periods necessary to accomplish justice.

VERIFICATION

I have read the attached verified complaint and to the best of my knowledge, recollection, and belief, its contents are true, accurate, and correct.

Executed on: January 5, 2022

Signed:

Janisha Gancy
 Plaintiff

NOTARY

Signed and sworn to before me this _____ day of _____ 20____.

 (Signature of Notary Public)

 (Printed name of Notary Public)

A handwritten signature in blue ink, appearing to be "John F. [unclear]", written in a cursive style.

RETRIEVED FROM DEMOCRACYDOCKET.COM

VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and
that its contents are true to the best of my information, knowledge, and belief.

Executed on: 1-4-2022

Signed: Betty Jean Alexander
Plaintiff

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10 / Page

VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

1/7/2022

Executed on:

Signed:

DocuSigned by:

Steven Christolm
Plaintiff

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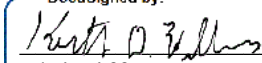
AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226
P: (313) 983-4600 | F: (313) 983-4665

VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on: 1/6/2022

Signed:

DocuSigned by:

Plaintiff

AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226
P: (313) 983-4600 | F: (313) 983-4665

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VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on:

1/3/2022

Signed:

Carol Heane
Plaintiff

AYAD LAW, P.L.L.C.

1000 E. 17th Ave., Suite 1000
Denver, CO 80202
Tel: (303) 733-4444
Fax: (303) 733-4444

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VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on: JANUARY 6, 2022

Signed: Wendell L. Boyer
Plaintiff

AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226
P: (313) 983-4600 | F: (313) 983-4665

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VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

1/4/2022

Executed on: _____

Signed: Shanelle Jackson
Plaintiff

AYAD LAW, P.L.L.C.
555 N. W. 1st St., Suite 2202
Fort Lauderdale, FL 33311
P: (954) 469-1888

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VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on:

1-5-22

Signed:

LaMar Lemmon

Plaintiff

AYAD LAW, P.L.L.C.

645 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226

P: (313) 983-4600 | F: (313) 983-4665

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VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on: 01-04-2022

Signed: *Irena Clark-Coleman*
Plaintiff

AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226
P: (313) 983-4600 | F: (313) 983-4665

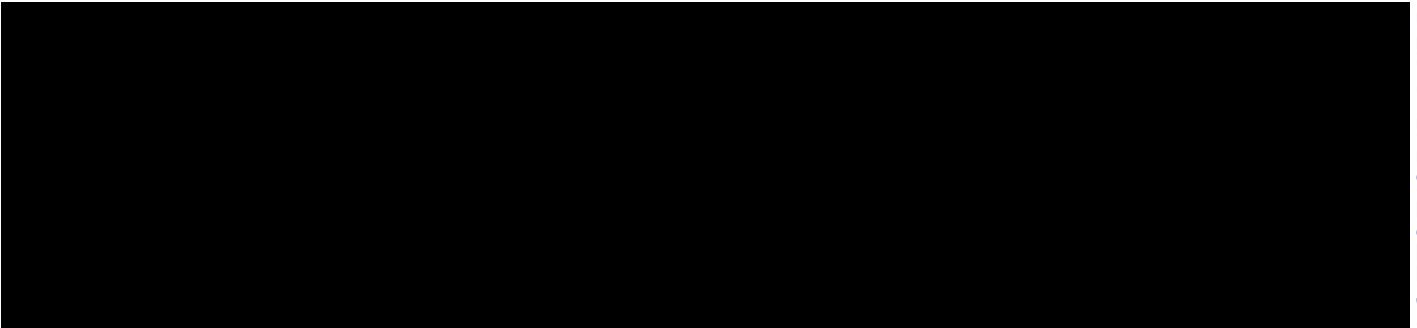
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Re: MIRC Complaint for Signature

lavonia perryman fairfax <lavoniaperryman@gmail.com>

Tue 1/4/2022 8:57 AM

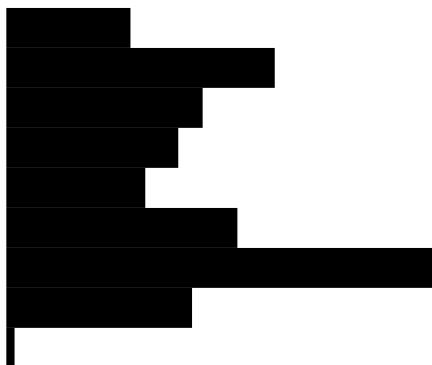
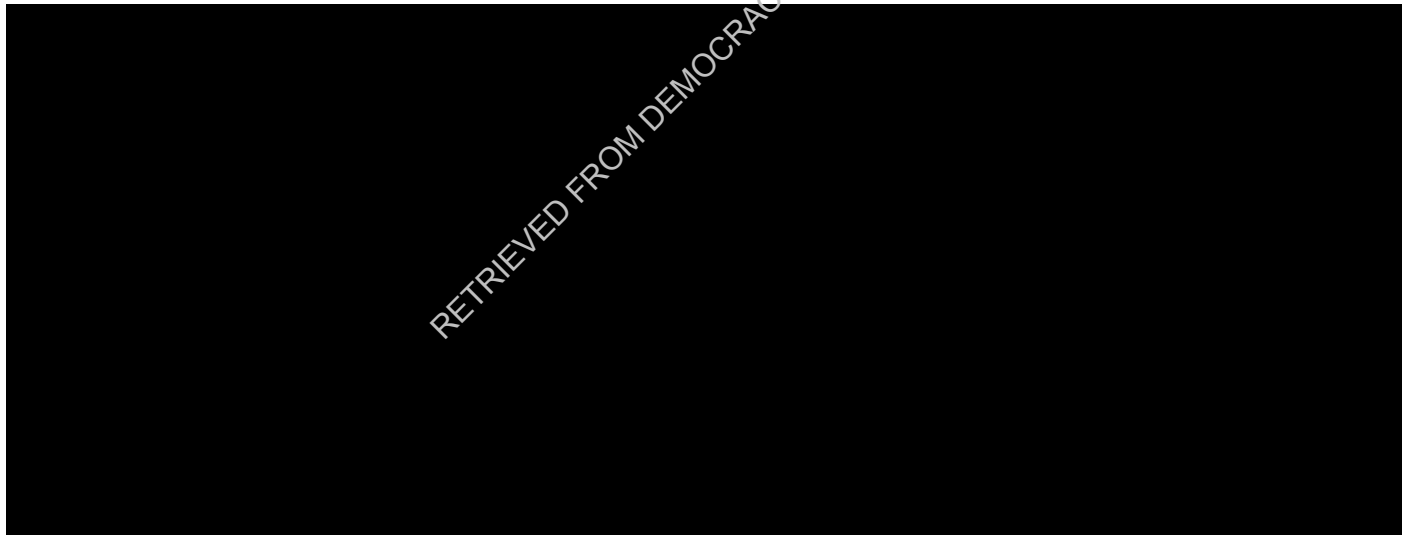
To: Luke Gehringer <lukegehringer@ayadlawpllc.com>



This to confirm I support the lawsuit and sign ad Jan 3, 2022

Lavonia Perryman
President
Shirley Chisholm
Metro Congress of Black Women
lavoniaperryman@gmail.com

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VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on: _____

Signed: _____

Plaintiff

AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
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RETRIEVED FROM DEMOCRACYDOCKET.COM

VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on:

Signed:

Plaintiff

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AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226
P: (313) 983-4600 | F: (313) 983-4665

Re: MIRC Complaint for Signature

Oliver Cole [REDACTED]

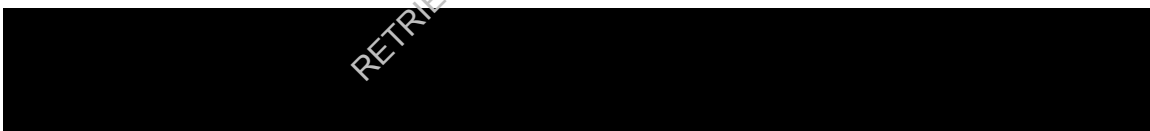
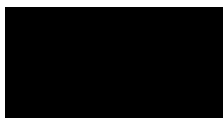
Fri 1/7/2022 3:19 PM

To: Luke Gehringer <lukegehringer@ayadlawpllc.com>

I have a Mac computer and cannot sign, download this form(s)

You have my permission/signature by THIS email to proceed.

Oliver Cole



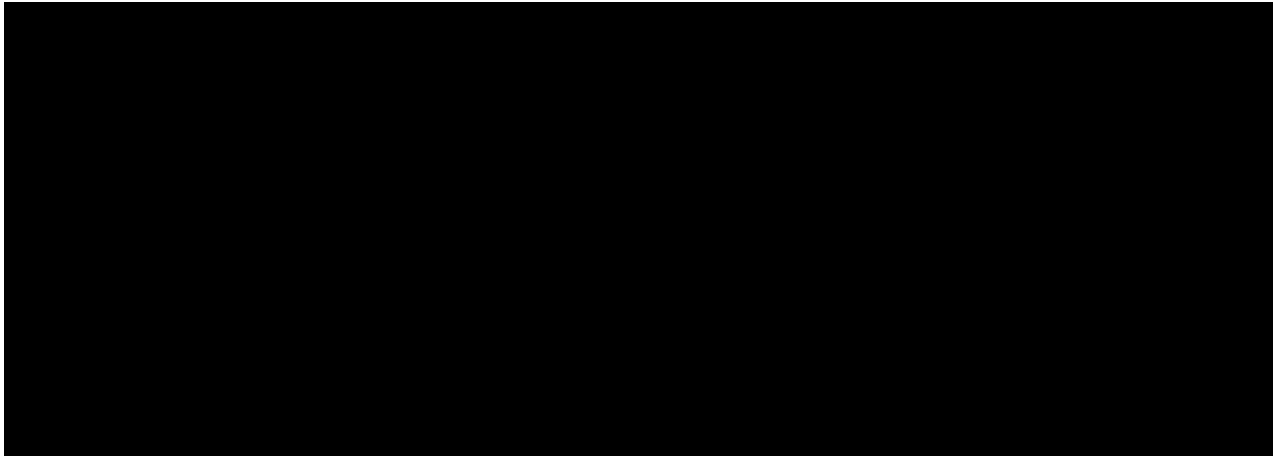
Sincerely,

Luke Gehringer, Esq.
Ayad Law, PLLC
645 Griswold St., Suite 2202
Detroit, MI 48226
P: 313-983-4600
F: 313-983-4665

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

From: Luke Gehringer

Sent: Monday, January 3, 2022 11:22 PM



Cc: Nabih Ayad <nabihayad@ayadlawpllc.com>; William Savage
<williamsavage@ayadlawpllc.com>; ayadlaw@hotmail.com <ayadlaw@hotmail.com>
Subject: MIRC Complaint for Signature



Sincerely,
Luke Gehringer, Esq.
Ayad Law PLLC
645 Griswold
Suite 2202
Detroit, MI 48226
lukegehringer@ayadlawpllc.com
313-983-4600

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VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on: January 5, 2022

Signed: Darryl Woods
Plaintiff

AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
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VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on: 1/10/2022

Signed:

DocuSigned by:
Norma D. McDaniel
0DD3785962CE151...
Plaintiff

AYAD LAW, P.L.L.C.
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P: (313) 983-4600 | F: (313) 983-4665

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1/10/2022

Executed on: _____

Signed: _____

DocuSigned by:

Melina McDaniel

1/10/2022 9:35:08 PM

Plaintiff

AYAD LAW, P.L.L.C.

645 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226

P: (313) 983-4600 | F: (313) 983-4665

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Executed on: 1/10/2022

Signed:

DocuSigned by:

Chitra Warren

EEB319F60C214B1...

Plaintiff

AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226
P: (313) 983-4600 | F: (313) 983-4665

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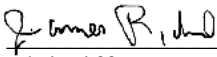
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VERIFICATION

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Executed on: 1/10/2022

Signed:

DocuSigned by:

Plaintiff

AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
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P: (313) 983-4600 | F: (313) 983-4665

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VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Executed on: 1/10/2022

Signed:

DocuSigned by:
Elena Herrada
13CFE812D93847D...
Plaintiff

AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226
P: (313) 983-4600 | F: (313) 983-4665

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CERTIFICATE OF SERVICE

I hereby certify that on this date I filed the foregoing paper and any attachments with the Clerk of Courts for the Michigan Supreme Court using the MiFile electronic filing system, as well as the following parties at the following addresses:

MICHIGAN INDEPENDENT REDISTRICTING COMMISSION
Julianne Pastula (P74739)
Attorney for Defendant
PO Box 30318, Lansing MI 48909
PastulaJ1@michigan.gov

FINK BRESSACK
David H. Fink (P28235)
Attorney for Defendant
645 Griswold Street, Suite 1717
Detroit, MI 48226
P: (248) 971-2500
F: (248) 971-2600

Rebecca Szetela
Chairperson and Commissioner
Michigan Independent Citizens Redistricting Commission
szetelar@michigan.gov
(517) 898-9366

Respectfully submitted;

AYAD LAW, PLLC

/s/Nabih H. Ayad
Nabih H. Ayad (P59518)
William D. Savage (P82146)
Attorneys for Plaintiff
645 Griswold St., Ste 2202
Detroit, MI 48226
P: 313.983.4600
F: 313.983.4665
nabihayad@ayadlawpllc.com

Dated: January 10, 2022

AYAD LAW, P.L.L.C.
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DETROIT, MICHIGAN 48226
P: (313) 983-4600 | F: (313) 983-4665

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IN THE STATE OF MICHIGAN
IN THE SUPREME COURT

DETROIT CAUCUS; ROMULUS CITY
COUCIL; DR. CAROL WEAVER, 14th
Congressional District Executive Board
Member; WENDELL BYRD, Former State
Representative; and DARRYL WOODS,
Resident of Wayne County.

Supreme Court Case No. 163926

Jurisdiction: Original pursuant to Mich Const
1963, art 4, §6(19)

Plaintiffs,

v.

MICHIGAN INDEPENDENT CITIZENS
REDISTRICTING COMMISSION,

Defendant.

AYAD LAW, PLLC
Nabih H. Ayad (P59518)
William D. Savage (P82146)
Attorney for Plaintiff
645 Griswold St., Ste 2202
Detroit, MI 48226
P: 313.983.4600
F: 313.983.4665
nabihayad@ayadlawpllc.com
williamsavage@ayadlawpllc.com

EXHIBIT A TO PLAINTIFF'S COMPLAINT

Attached below please find **Exhibit A to Plaintiffs' Complaint: Michigan Department of Civil Rights December 9, 2021 Memorandum: Analysis of MICRC's Proposed Maps.**

Respectfully submitted;

AYAD LAW, PLLC

/s/Nabih H. Ayad

Nabih H. Ayad (P59518)

William D. Savage (P82146)

Attorneys for Plaintiff

645 Griswold St., Ste 2202

Detroit, MI 48226

P: 313.983.4600

F: 313.983.4665

nabihayad@ayadlawpllc.com

Dated: January 6, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this date I filed the foregoing paper and any attachments with the Clerk of Courts for the Michigan Supreme Court using the MiFile electronic filing system.

Respectfully submitted;

AYAD LAW, PLLC

/s/Nabih H. Ayad

Nabih H. Ayad (P59518)

William D. Savage (P82146)

Attorneys for Plaintiff

645 Griswold St., Ste 2202

Detroit, MI 48226

P: 313.983.4600

F: 313.983.4665

nabihayad@ayadlawpllc.com

Dated: January 6, 2022



MEMORANDUM

DATE: December 9, 2021

TO: Members of the Michigan Independent Citizens Redistricting Commission

FROM: John E. Johnson, Jr., Executive Director of the Michigan Department of Civil Rights on behalf of the MDCR and the Michigan Civil Rights Commission

SUBJECT: **Analysis of MICRC's Proposed Maps**

Michigan Independent Citizens Redistricting Commissions' (MICRC) proposed, maps may lead to forbidden retrogression in minority voting strength. Election district maps cannot be drawn that will impair the ability of geographically insular and politically cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice. ***Thornburg v. Gingles*** (1986).

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

—Voting Rights Act of 1965

Coalitions of Black, Asian, Hispanic, Native American, "Other," and those who identify with "two or more" racial groups have had the ability to coalesce and elect candidates of their choice. The VRA requires majority-minority districts be drawn to prevent vote dilution in Saginaw, Southfield, Flint, Pontiac, Taylor, Inkster, Redford, Hamtramck, and Detroit. Each of these communities of interest could be denied the opportunity to elect a candidate of their choice if the present percentages of majority-minority districts are diluted.

The U.S. Supreme Court determined three threshold measures in ***Thornburg v. Gingles*** (1986) to evaluate whether or not an electoral map violates the rights of minority groups set forth in the Voting Rights Act.

- A minority group must demonstrate it is large enough and compact enough to constitute a majority in a electoral district;
- A minority group must demonstrate it is politically united;
- A minority group must demonstrate the majority group historically votes

sufficiently as a group to defeat the minority group's preferred candidate; coalitions of Black, Asian, Hispanic, Native American, "Other," and those who identify with "two or more" racial groups have had the ability to come together and elect candidates of their choice.

Justice Brennan said in *Gingles*, 478 U.S. at 36-37, that there are several additional "objective factors" in determining the "totality of circumstances" surrounding an alleged violation of Section 2 of the Voting Rights Act. Some objective factors include the extent to which the members of the minority group bear the effects of discrimination in areas like education, employment, and health, which hinder effective participation, is one measure.

In Michigan the effects of discrimination that help demonstrate the "totality of circumstances", that surround the potential violation of the Voting Rights Act in the MICRC is proposed November 5, 2021, maps include:

- Until the 1954 election of Charles Diggs in the old 15th District (13th today) followed by the election of John Conyers 10 years later in 1964 in the old 1st District (14th today) Detroit's majority-minority community could not elect a Congressional candidate of their choice
- The quality of education in Michigan depends greatly on where students live. Residency is dependent on household income, which in turn is dependent on the opportunities provided to families, which is also dependent on parents' own race and background.
- The continuing crisis in Flint, Michigan relating to its public water supply and delivery system includes allegations that the city's residents are the victims of discrimination based on their race, color, national origin, age, and disability.
- Black, Hispanic, and Latino ethnicity, non-English speaking status, lower socioeconomic status, and are more likely to be admitted to the hospital as Michigan's Covid-19 hospitalized patients. This creates a disparity in the ability to vote.

One measure of whether the majority-minority communities will be worse off than before is whether they are likely to be able to elect fewer minority representatives than before redistricting. If they are able to elect fewer minority representatives, then there is a dilution of present Black voting strength.

Table 1 demonstrates the number of predominantly Black Michigan districts under the Legislative Plans that are current and the collaborative and individual Commissioner plans.

The collaborative MICRC plans are Apple V2, Birch V2 Chestnut, Magnolia, Magnolia am, Hickory, Cherry V2, Palm, and Linden. The individual MICR Commissioner plans are: Stzetela Congressional, Stzetela House, Stzetela Senate, Kellom Senate, and Lange Senate.

Citizen Voting Age by Race and Ethnicity (CVAP) is tabulated by the US Census Bureau at the request of the US Department of Justice. Work on a CVAP directly from the 2020 Census data has been suspended indefinitely.

Voting Rights Act and Citizen Voting Age Population Statistics

Table 1

Legislative Plan	Majority- Black Districts (2019 CVAP)	
Current US House	2	
Apple V2	0	
Birch V2	0	
Chestnut	0	
Lange	0	
Stzetela	0	
Current State House	12	
Magnolia am	6	
Magnolia	6	
Hickory	6	
Stzetela House	6	
Current State Senate	4	
Cherry V2	0	
Palm	0	
Linden	0	
Stzetela Senate	0	
Kellom Senate	3	
Lange Senate	0	
Based on Black-alone and Black/White 2-race		

<https://promotethevotemi.com/wp-content/uploads/2021/11/2021-rd-metric-report-with-charts.pdf>

Using the latest available 2019 Citizens Voting Age Population (CVAP) none of the five Nov. 5, 2021, proposed Congressional District maps has a majority Black district (50% plus) while currently there are two.

With 2019 CVAP data there twelve State House Districts that are majority Black (with three majority-minority districts). MICRC Nov. 5, 2021, proposed maps would cut the number of majority Black districts in half.

Similarly, the four State Senate Districts that are majority Black using 2019 CVAP data would be reduced in five of the six Nov. 5, 2021, maps. Commissioner Kellom's map contains three majority Black State Senate districts.

An act that reduces minorities' opportunity to participate in the political process and to elect representatives of their choice is a violation of the Voting Rights Act, 42 USC § 1973(b).

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IN THE STATE OF MICHIGAN
IN THE SUPREME COURT

DETROIT CAUCUS; ROMULUS CITY COUNCIL; INKSTER CITY COUNCIL; TENISHA YANCY, as a State Representative and individually; SHERRY GAY-DAGNOGO, as a Former State Representative and individually; TYRONE CARTER, as a State Representative and individually; BETTY JEAN ALEXANDER, as a State Senator and individually, Hon. STEPHEN CHISHOLM, as member of Inkster City Council and individually, TEOLA P. HUNTER, as a Former State Representative and individually; Hon. KEITH WILLIAMS, as Chair MDP Black Caucus and individually; DR. CAROL WEAVER, as 14th Congressional District Executive Board Member and individually; WENDELL BYRD, as a Former State Representative and individually; SHANELLE JACKSON, as a Former State Representative and individually; LAMAR LEMMONS, as a Former State Representative and individually; IRMA CLARK COLEMAN, as a Former Senator & Wayne County Commissioner and individually; LAVONIA PERRYMAN, as representative of the Shirley Chisholm Metro Congress of Black Women and individually; ALISHA BELL, as Wayne County Commissioner and individually; NATALIE BIENAIME, as a Citizen of the 13th District; OLIVER COLE, as a resident of Wayne County; ANDREA THOMPSON, as a resident of Detroit; DARRYL WOODS, as a resident of Wayne County, NORMA D. MCDANIEL, as a Resident of Inkster; MELISSA D. MCDANIEL, as a resident of Canton, as a CHITARA WARREN, as a resident of Romulus; JAMES RICHARDSON, as a resident of Inkster, ELENA HERRADA, as a resident of Detroit

Supreme Court Case No. 163926

Jurisdiction: Original Pursuant to Mich. Const. Art. 4, §6(19).

Plaintiffs,

v.

AYAD LAW, P.L.L.C.
645 Griswold St., Ste. 2202
DETROIT, MICHIGAN 48226
P: (313) 983-4600 | F: (313) 983-4665

MICHIGAN INDEPENDENT CITIZENS
REDISTRICTING COMMISSION,

Defendant.

AYAD LAW, PLLC
Nabih H. Ayad (P59518)
William D. Savage (P82146)
Attorney for Plaintiff
645 Griswold St., Ste 2202
Detroit, MI 48226
P: 313.983.4600
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nabihayad@ayadlawpllc.com
williamsavage@ayadlawpllc.com

YANCEY LAW, PLLC
Tenisha Yancey (P78319)
Attorney for Plaintiffs
18640 Mack Ave.
Grosse Pointe, MI 482336
tenisha.yancey@gmail.com

MICHIGAN INDEPENDENT
REDISTRICTING COMMISSION
Julianne Pastula (P74739)
Attorney for Defendant
PO Box 30318, Lansing MI 48909
PastulaJ1@michigan.gov

FINK BRESSACK
David H. Fink (P28235)
Attorney for Defendant
645 Griswold Street, Suite 1717
Detroit, MI 48226
P: (248) 971-2500
F: (248) 971-2600

**BRIEF IN SUPPORT OF FIRST
AMENDED VERIFIED COMPLAINT**

The above-named Plaintiffs (hereinafter "Plaintiffs"), by and through their attorneys at Ayad Law, PLLC, submit the following brief in support of their complaint:

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STANDARDS OF REVIEW	8
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b. Declaratory relief	9
ARGUMENT	9
I. Plaintiffs are entitled to the relief requested in the complaint, because Defendant's redistricting Plans are undeniably in violation of the Michigan Constitution.	9
a. Plaintiffs meets the three threshold criteria outlined by the US Supreme Court in Thornburg v Gingles.	9
i. Gingles 1: the minority group is sufficiently large and geographically compact to constitute majority in a single-member district.	11
ii. Gingles 2: the minority group is politically cohesive.	12
iii. Gingles 3: the majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidates.	12
b. All of the factors enumerated by the United States Senate weigh heavily in favor of awarding Plaintiffs the relief requested in their Complaint.	13
i. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process.	15
ii. The extent to which voting in the elections of the state or political subdivision is racially polarized.	15
iii. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single	16

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shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group.	
iv. If there is a candidate slating process, whether the members of the minority group have been denied access to that process.	16
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JURISDICTIONAL STATEMENT

The Court has original subject-matter jurisdiction over this action under Article IV, Section 6(19), of the Michigan Constitution of 1963.

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QUESTION PRESENTED

1. Did Defendant, in failing to consider primary election data and in reducing the number of Black-majority districts from a total of 18 down to 6, unlawfully dilute the voting power of Black Michiganders?

Plaintiffs answer: "Yes."

Defendant answers (presumably): "No."

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STATEMENT OF FACTS

On November 6, 2018, Michiganders voted to amend the Michigan Constitution of 1963 to create the Michigan Independent Citizens Redistricting Commission (hereinafter "Defendant" or "the Commission"). The amendment added, in pertinent part, the following language to Michigan's Constitution:

(13) The commission shall abide by the following criteria in proposing and adopting each plan, in order of priority:

(a) Districts shall be of equal population as mandated by the United States constitution, and shall comply with the voting rights act and other federal laws.

...

(c) Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

Mich Const 1963, art 4, §6(13)(a) and (c) (emphasis added).

After being created, the Commission has maintained that its mission and vision are:

Mission: To lead Michigan's redistricting process to assure Michigan's Congressional, State Senate, and State House district lines are drawn fairly in a citizen-led, transparent process, meeting Constitutional mandates.

Vision: To chart a positive course for elections based on fair maps for Michigan today and for the future.

(See <https://www.michigan.gov/micrc/0,10083,7-418-92033---,00.html>, last visited January 3, 2022, emphasis in original.)

This Supreme Court has already ruled that the Commission failed in its self-stated mission of 'transparency' when on December 20, 2021, it ruled that the Commission had violated Michigan's Open Meetings Act, and ordered the commission to make public the meetings they had been having in private.

On December 28, 2021, the Commission officially approved its redistricting maps (or "Plans") for the state of Michigan's Congressional, State Senate, and State House voting districts.

Blacks are by far the largest community of interest in Michigan. [Pursuant to federal law, a community of interest for § 2 purposes is one that meets three criteria outlined by the US Supreme Court (see *Gingles, infra*): sufficiently large and geographically compact; sufficiently cohesive; and tends to vote differently than their majority-opposition. Michigan uses a much broader definition. "Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests." Mich Const 1963, art 4, §6(13)(c)] According to the U.S. Census Bureau, Blacks make up 15.21% of the population of the state of Michigan.¹ Yet, in Defendant's Plans, the Black Community of Michigan will have no opportunity to elect their preferred candidate in US Congressional races, Michigan Senate races, and the opportunity to elect exactly half as many Michigan House candidates as they have since 2011.

It is clear from the Commission's current proposed Plans that they will also be falling woefully short of their vision: "To chart a positive course for elections based on fair maps for Michigan today and for the future." Michigan Redistricting Commission was sold to the Michigan voter as a means of reducing gerrymandering in the redistricting of Michigan's voter districts following the 2021 census. However, the idea of a non-discriminatory, non-racist, redistricting plan has been shattered by the revelation of the Michigan Redistricting Commissions Plans, **which completely gerrymander Michigan's Blacks out of political representation.**

That is because Defendant's own expert admits that she did not use the necessary primary election data in presenting her analysis to Defendant. The reason that this is important in determining what percentage of a population must be Black in order for the Black-preferred candidate to be elected is that it cannot be said for certain that the Democrat running in the general election was the Black-preferred candidate, despite receiving an overwhelming percentage of the Black vote in the general election. For example, say four candidates are running for one office:

¹ <https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,mi/PST045217>

Black Republican ("BR"), White Republican ("WR"), Black Democrat ("BD"), and White Democrat ("WD"). In this hypothetical district, Blacks make up 33% of the population. In the primaries, the Blacks that vote, vote 99% for BD, yet WR and WD win their respective primaries. Then, WD wins the general election, with 99% of the Blacks that vote, voting for WD. In this example, clearly BD was the Black-preferred candidate. But if one does not even look at the primary data, and only looks at the voting records from the general election, then it would appear that this Black community successfully got their preferred candidate (WD) elected. **What is more, it would lead to the mistaken conclusion that in this region, Blacks need only make up 33% of the voting age population of a district to get their preferred candidate elected, when, in fact, the exact opposite is true.** This is the exact fallacy that Defendant has explicitly fallen victim to.

Likewise, comments made at Defendant's closed door meetings illustrate that Defendant did not use the necessary primary data in determining a threshold Black Voting Age Population ("BVAP") necessary for the Black communities of Michigan to achieve representation. (A number that any competent elections expert would place well above 51%, but that Defendant erroneously placed well below 50%.) Because Defendant lacked the information necessary to draw districts in compliance with the Voting Rights Act of 1965 ("VRA"), it is impossible that they did not violate the Michigan Constitution. See **Exhibit A, Affidavit of Elections Expert, Ed Sarpolus.**

It is important to note again here that Defendant's intentions do not matter in this action. Pursuant to the Voting Rights Act, only the results of a redistricting plan are analyzed, not the subjective intentions of its designer. *Thornburg v Gingles*, 478 US 30, 71; 106 S Ct 2752, 2777; 92 L Ed 2d 25 (1986).

As a result of Defendant's conduct, the new US Congressional Plans, with their new voting district maps, were backed by only eight out of thirteen of the randomly selected voters who serve

on the commission. Should the Plans for the US Congressional districts be adopted, it would completely eliminate the two majority-minority (Black) districts that currently run through the largest concentrated Black population in Michigan (Detroit). Instead, those districts would be apportioned into eight new districts comprised of eight small sections of the Black community in and around Detroit, each paired with a large section of a majority-non-Black suburb of Detroit (such as Birmingham and Bloomfield Hills). Each of the new districts would then become majority-non-Black. As non-Black voters tend to vote for non-Black candidates, Defendant's proposed US Congressional district Plans would reduce the chances of the Blacks of Michigan from getting one to two of their preferred US Congress candidates on the general election ballot down to zero; effectively blocking representation at the federal level for Black's in Michigan.

Similarly, Defendant's redistricting Plans would completely rob the Black minority of Michigan of its ability to elect their chosen representatives into the Michigan Senate, and halve the potential candidates they could elect to the Michigan House of Representatives.

This practice of splintering a majority-minority voter district is termed "dilution," is banned by the Michigan Constitution at article 4, §6(13)(a) and (c), and has long been banned by federal law pursuant to the Voting Rights Act of 1965. The Commission's redistricting is a blatant and obvious "dilution" of the national and Michigan Civil Rights Movement and sets-back the Black population of Michigan generations by undoing the hard-fought representation achieved by the Black community in Michigan over the last 70 years.

Biden won the city of Detroit with 94% of the vote while Trump received 5%, according to the city of Detroit's election results.² Yet statewide in Michigan, Biden defeated Trump by

² <https://www.freep.com/story/news/politics/elections/2020/11/06/joe-biden-detroit-michigan-vote-election-2020/6168971002/>

merely 50.6% to 47.9% (voter turnout was 71%). These numbers make undeniably clear that the Black population of Michigan is a community of interest which has its own preferred political candidates and which, when districts are mapped fairly, has the power to elect the representatives of their choice.

Michigan voters supported establishing an Independent Citizens Redistricting Commission in 2018 on the premise it would eliminate “gerrymandering” in the creation of legislative and congressional districts in the State. Initially, the Independent Redistricting Commission stated that they would work to develop fair, non-partisan leaning legislative and congressional districts. Secondly, and more strongly, the Commission indicated they would respect and protect communities of interest. From review of their draft plans, it is clear that the Commission has failed in both of these regards.

The largest community of interest in Michigan is the Black population. Republicans are not a community of interest. Mich Const 1963, art 4, §6(13)(c). Democrats are not a community of interest. Mich Const 1963, art 4, §5(13)(c).³

The redistricting plans of the Michigan Independent Redistricting Commission are bipartisan **racial** gerrymandering which, if implemented, would unlawfully reduce the voting power of minority racial groups to elect the candidate of their choosing. The reduction of majority-minority districts from the plans previously adopted in 2011 can be plainly seen by the results of the redistricting on the representation of Black voters and the citizens of City of Detroit.

Examples of Dilution: 2011 to 2021⁴

Congressional Map

³ It is highly important to note here that for purposes of voting district boundaries, compliance with the Michigan Constitution and federal law requires consideration of data from primary elections (which Defendant did not use), not general elections, as not every Democrat candidate is/was the Black community's preferred candidate in the primaries.

⁴ **Exhibit A, Michigan Department of Civil Rights December 9, 2021 Memorandum: Analysis of MICRC's Proposed Maps.**

- 2011 Current Map contains 2 (two) majority Black districts
- 2021 Plans contain 0 (zero) majority Black districts

State Senate Map

- 2011 Current map contain 4 (four) majority Black districts
- 2021 Plans contain 0 (zero) majority Black districts

State House Map

- 2011 Current map contains 12 (twelve) majority Black districts
- 2021 Plans contain 6 (six) majority Black districts

Defendant's current proposed plans have been denounced by an entire department of the government of Michigan, in that the Michigan Department of Civil Rights released a memorandum stating and showing that the proposed maps of Defendant unlawfully dilute the voting power of Blacks in the state of Michigan. See **First Amended Complaint at Exhibit A, Michigan Department of Civil Rights December 9, 2021 Memorandum: Analysis of MICRC's Proposed Maps.**

An expert hired by Defendant also admits that they were lacking the proper data regarding Black voters in Michigan when they drew up the Plans: "Lisa Handley, one of the commission's experts... noted a lack of data to discern how Black candidates may be affected by white voters in primaries, which decide many races."⁵ That data was obtainable, and was absolutely necessary to the Commission in order for it to be able to comply with the Michigan Constitution and federal law, as even the law of the Voting Rights Act of 1965 requires the map-makers to consider certain datapoints that Defendant apparently did not have. In fact, Defendant attempted to extend their

⁵ <https://www.usnews.com/news/best-states/michigan/articles/2022-01-03/black-lawmakers-to-sue-to-block-michigan-redistricting-maps>

deadline to submit their final Plans multiple times, and cited as one reason that they lacked the data required to properly fulfil their legislative purpose.⁶

Defendant never published the guidelines, protocols, and procedures that it used in formulating its Plans and, it is clear from the claims of their own expert of the lack of required data, that they did not use the necessary guidelines, protocols, and procedures in creating their current Plans.

The current proposed plans, which almost completely politically silence the Black community of interest, could be easily remedied in short order. Owing to the current Plans boundaries surrounding the largest concentration of Blacks in the state of Michigan (the Detroit area), each of the three Plans could have their district borders in and around Detroit tweaked just a relatively small amount in a way that would completely undue the Defendant's dilution of the Black vote in Michigan while leaving the rest of the Plans 100% intact.

Throughout the redistricting process, the Michigan Independent Redistricting Commission has been opaque with the public in regards to its compliance with the Voting Rights Act, in contravention of its mandate under the Michigan Constitution to perform its “duties in a manner that is impartial and reinforces public confidence in the integrity of the redistricting process. The commission shall conduct all of its business at open meetings.” Mich. Const. Art. 4, § 6(10). In fact, this honorable Court recently ruled that a recording of MICRC’s October 27, 2021 meeting, during which two (2) memoranda were discussed involving the proposed maps compliance with the Voting Rights Act, must be disclosed to the public because the meeting involved the development of the redistricting map.⁷ This court further ruled that seven (7) additional

⁶ <https://apnews.com/article/redistricting-census-2020-government-and-politics-health-michigan-47512ce8963ac0097a9139dca98fa2a3>

⁷ Mich Sup. Ct. Docket No. 163823

memoranda out of 10 must be disclosed to the public as “supporting materials” under Const 1963, art 4, § 6(9).⁸

STANDARDS OF REVIEW

a. Injunctive relief.

When deciding whether to grant an injunction under traditional equitable principles:

[A] court must consider (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued.

Barrow v Detroit Election Com'n, 305 Mich App 649, 662–63; 854 NW2d 489, 497 (2014).

A court's issuance of a preliminary injunction is generally considered equitable relief. *Pontiac Fire Fighters Union Local 376 v. City of Pontiac*, 482 Mich. 1, 11, 753 N.W.2d 595 (2008). Traditional equity principles are a [] court's guide to whether injunctive relief is just and proper. *Michigan AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143; 809 NW2d 444 (2011). A [] court's grant of injunctive relief is reviewed for an abuse of discretion. *Mich. Coalition of State Employee Unions v. Civil Serv. Comm.*, 465 Mich. 212, 217, 634 N.W.2d 692 (2001). “[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes.” *Saffian v. Simmons*, 477 Mich. 8, 12, 727 N.W.2d 132 (2007); see also *Pontiac Fire Fighters*, 482 Mich. at 8, 753 N.W.2d 595. The trial court's factual findings are reviewed for the clear error. *Herald Co., Inc. v. Eastern Mich. Univ. Bd. of Regents*, 475 Mich. 463, 467, 719 N.W.2d 19 (2006); *Int'l Union, United Auto., Aerospace & Agricultural Implement Workers of America, UAW v. Michigan*, 231 Mich. App. 549, 551, 587 N.W.2d 821 (1998). Issues involving the proper interpretation of a court rule or statute are reviewed *de novo* as

⁸ *Id.*

questions of law. *Henry v. Dow Chem. Co.*, 484 Mich. 483, 495, 772 N.W.2d 301 (2009); *Estes v. Titus*, 481 Mich. 573, 578–579, 751 N.W.2d 493 (2008).

b. Declaratory relief.

“The purpose of a declaratory judgment is to enable the parties to obtain an adjudication of their rights before actual injuries or losses have occurred.” *Detroit Base Coalition for Human Rights of Handicapped v Department of Social Servs*, 431 Mich 172, 191; NW2d 335 (1988). “The declaratory judgment rule was intended and has been liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to people.” *Id.* A plaintiff seeking a declaratory judgment must show that (i) “a case of actual controversy” between the parties and (ii) the actual controversy is within the court’s jurisdiction. MCR 2.605(A)(1); *League of Women Voters of Michigan v Secy of State*, 506 Mich 561, 586; 957 NW2d 731 (2020). “An actual controversy exists when a declaratory judgment is needed to guide a party’s future conduct in order to preserve that party’s legal rights.” *League of Women Voters*, 506 Mich at 586. A case of actual controversy is within the Court’s jurisdiction when “the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.” MCR 2.605(A)(1); *See Allstate Ins Co v Hayes*, 442 Mich 56, 66; 499 NW2d 743 (1993) (recognizing that if—among other things—“a court would not otherwise have subject matter jurisdiction over the issue before it,” then the court would lack the authority to “declare the rights and obligations of the parties before it”).

ARGUMENT

I. Plaintiffs are entitled to the relief requested in the complaint, because Defendant's redistricting Plans are undeniably in violation of the Michigan Constitution.

a. Plaintiffs meets the three threshold criteria outlined by the US Supreme Court in *Thornburg v Gingles*.

The amendment added, in pertinent part, the following language to Michigan's Constitution:

(13) The commission shall abide by the following criteria in proposing and adopting each plan, in order of priority:

(a) Districts shall be of equal population as mandated by the United States constitution, and shall comply with the [V]oting [R]ights [A]ct [of 1965] and other federal laws.

...

(c) Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

Mich Const 1963, art 4, §6(13)(a) and (c) (emphasis added).

The Voting Rights Act of 1965 is a landmark piece of federal legislation in the United States that prohibits racial discrimination in voting.⁹ Prior to its enactment, Congress determined that the existing federal anti-discrimination laws were not sufficient, and legislative hearings showed that the Department of Justice's efforts to eliminate discriminatory election practices by litigation on a case-by-case basis had been unsuccessful; as soon as one discriminatory practice or procedure was proven to be unconstitutional and enjoined, a new one would be substituted in its place and litigation would have to commence anew. *Id.* The Act was signed into law during the height of the civil rights movement on August 6, 1965, and Congress later amended the Act five times to expand its protections. *Id.*

"In amending § 2, Congress rejected the requirement announced by this Court in *Bolden, supra*, that § 2 plaintiffs must prove the discriminatory intent of state or local governments in adopting or maintaining the challenged electoral mechanism." *Thornburg v Gingles*, 478 US 30, 71; 106 S Ct 2752, 2777; 92 L Ed 2d 25 (1986) (emphasis added). **Therefore, unlike discrimination claims brought directly pursuant to Amendments of the United States**

⁹ <https://www.justice.gov/crt/history-federal-voting-rights-laws>

Constitution, which require proof of both discriminatory intent and actual discriminatory effect, the language of § 2 of the Voting Rights Act requires only proof of discriminatory results, not of discriminatory intent. *Greater Birmingham Ministries v. Secretary of State for State of Alabama*, C.A.11 (Ala.) 2021, 992 F.3d 1299.

Plaintiffs claiming vote dilution in violation of Voting Rights Act must show three threshold conditions, which were first enumerated in *Thornburg v Gingles*, 478 US 30, 71; 106 S Ct 2752, 2777; 92 L Ed 2d 25 (1986). The first '*Gingles*' condition is that the minority group is sufficiently large and geographically compact to constitute majority in a single-member district; Second, that the minority group is politically cohesive; And third, that the majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidates. *Id.*; *Abrams v. Johnson*, U.S.1997, 117 S.Ct. 1925, 521 U.S. 74, 138 L.Ed.2d 285. *Gingles* and the majority of the caselaw discusses proposed multi-member district plans, but here the proposed plans are for single-member districts. When single member districts are used, a plaintiff's burden becomes that much lighter, because even if the minority makes up 49% of the functional voting population in a single-member district, they are likely to lose every single election. See *Cane v. Worcester County, Md.*, D.Md.1995, 874 F.Supp. 687, modification denied 874 F.Supp. 695, affirmed in part, vacated in part 59 F.3d 165, certiorari dismissed 116 S.Ct. 980, 516 U.S. 1105, 518 U.S. 1016, 133 L.Ed.2d 833, certiorari denied 116 S.Ct. 2546, 518 U.S. 1016, 135 L.Ed.2d 1066. [Holding that, in a single-member district, even when the minority had a functional majority (of 44.68% of population), the district violated § 2 of the Voting Rights Act because the majority, voting as a bloc, could defeat the minorities preferred candidate every time, thereby denying the minority an equal chance to win.]

- i. ***Gingles* 1: the minority group is sufficiently large and geographically compact to constitute majority in a single-member district.**

The Black community of Michigan is “sufficiently large and geographically compact to constitute a majority in a single-member district” as is apparent from the 2020 census data, which shows that, in multiple regions around Pontiac, Saginaw, Flint, and Detroit, a district could be created which would be majority-Black. In fact, the 2020 census data shows that Michigan's Black population in the Southeastern part of the state (in and around Detroit) could provide two to four majority-Black districts in each of the three Plans. That is because the City of Detroit's population is 77.7% Black as per the 2020 census.

ii. *Gingles 2: the minority group is politically cohesive.*

The Black community of Michigan is “politically cohesive” as is shown by their voting record where Detroit Blacks account for 79.1% of the total population of Detroit. Biden won amongst Detroiters with 94% of the vote while Trump received 5%. Yet statewide in Michigan voter turnout was 71% and Biden defeated Trump by merely 50.6% to 47.9%, meaning that it was the Black community who, voting as a cohesive group, won the Presidential election for President Joseph Biden in this State and, potentially, the Country.

Another recent example is the contest for the US House of Representatives seat from Michigan's 13th Congressional district. Although the 13th district consists of a very high Black voting age population, in 2020 the incumbent Representative Brenda Jones lost her primary to the non-Black Rashida Tlaib. Jones decisively lost the primary election to Tlaib 66%-34% on August 4. The margin of Jones's loss was considered to be very large, especially considering the large Black population of the 13th district.¹⁰

iii. *Gingles 3: the majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidates.*

¹⁰ <https://www.detroitnews.com/story/news/local/detroit-city/2020/08/04/tlaib-has-early-lead-rematch-jones-michigans-13-th-district/5522563002/>

According to the federal law compliance attorney hired by Defendant, their own expert found that there was racial (White) bloc voting historically in Michigan. "Dr. Lisa Handley conducted a racially polarized voting analysis for the Michigan Independent Citizens Redistricting Commission in which she concluded that racial bloc voting exists in Michigan."¹¹ Accordingly, even according to Defendant's own expert on the issue, Plaintiffs meet the third *Gingles* condition.

Bloc voting by other members of the electorate usually defeats the minority-preferred candidates: Until the 1954 election of Charles Diggs in the old 15th District (13th today) followed by the election of John Conyers 10 years later in 1964 in the old 1st District (14th today) Detroit's majority-minority community could not elect a Congressional candidate of their choice.

Another example is the 2012 Michigan House of Representatives race in the 1st District (West Detroit), in which Black candidate Brian Banks ran in the primary election, but the Grosse Pointe Democrats official organization flat out refused to endorse Banks, the Democrat nominee.

Wherefore, Plaintiffs undeniably meet the *Gingles*' 'community of interest' threshold test, and a "totality of the circumstances" analysis of Plaintiffs' case must be performed.

b. All of the factors enumerated by the United States Senate weigh heavily in favor of awarding Plaintiffs the relief requested in their Complaint.

"The 'results' test [of the Voting Rights Act] focuses judicial inquiry on objective factors concerning the 'totality of circumstances' bearing on the present ability of minorities effectively to participate in the political process." *Johnson v Halifax Co*, 594 F Supp 161, 168 (EDNC, 1984). The Senate Report identifies the following factors as relevant to the § 2 "totality of circumstances" inquiry:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

¹¹

https://www.michigan.gov/documents/micrc/PC_Memorandum_on_Voting_Discrimination_Oct_26_Released_Dec_20_744046_7.pdf at p. 4.

2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. whether political campaigns have been characterized by overt or subtle racial appeals; and
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

S.Rep. No. 417 at 28–29 (footnotes omitted), U.S.Code Cong. & Admin.News 1982, p. 206–207.

These seven factors are not, however, exhaustive, and courts are to consider any other factor which they deem relevant to the totality of the circumstances in the particular case before them. *Reed v Town of Babylon*, 914 F Supp 843, 884 (EDNY, 1996), citing *Johnson v De Grandy*, 512 US 997, 1011; 114 S Ct 2647, 2657; 129 L Ed 2d 775 (1994). Courts have often considered two additional factors relevant here:

8. whether there is significant lack of responsiveness on part of elected officials to particularize need of members of minority group; and
9. whether policy underlying challenged practice or procedure is tenuous.

Id.

Congress did not intend the factors “to be used [] as a mechanical ‘point counting’ device.”

S.Rep. No. 417, supra, at 29, n. 118, U.S.Code Cong. & Admin.News 1982, p. 207, n. 118. Nor is

there a requirement “that any particular number of factors be proved, or that a majority of them point one way or the other.” *Id.* at 29, U.S.Code Cong. & Admin.News 1982, p. 207. Rather, evidence about these and other relevant factors is intended as a guide for the court's exercise of its judgment about whether “the electoral system, in light of its present effects and historical context, treats minorities so unfairly that they effectively lose access to the political processes.” *Jones v City of Lubbock*, 727 F2d 364, 384 (CA 5, 1984); See also *United States v Marengo Co Com'n*, 731 F2d 1546, 1565 (CA 11, 1984); See also *Gingles, supra*.

i. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process.

As stated above under the *Gingles* condition 3 section, until the 1954 election of Charles Diggs in the old 15th District (13th today) followed by the election of John Conyers 10 years later in 1964 in the old 1st District (14th today) Detroit’s majority-minority community could not elect a Congressional candidate of their choice.

Additionally, until § 4 of the Voting Rights Act was held unconstitutional by the US Supreme Court, multiple regions in Michigan (Allegan and Saginaw Counties) were deemed historically racist enough that they qualified under VRA § 4 for "prequalification." That meant that any proposed redistricting of those regions was required to be pre-approved by the federal government, either in a federal court or by the department of justice in Washington D.C.

In light of the world-infamous Detroit Rebellion (also known as the Detroit Riot of 1967) which was sparked by discriminatory policing, and the Detroit Race Riots of 1943, which were the culmination of years of racial abuse of the Blacks of Detroit, it cannot seriously be questioned that Michigan has suffered from a long history of official discrimination.

ii. The extent to which voting in the elections of the state or political subdivision is racially polarized.

As was discussed above, in the second *Gingles* condition, the Black community of Michigan is “politically cohesive.” This is shown by their voting record statewide, and where, in the 2020 general election, Detroit Blacks account for 79.1% of the total population of Detroit. Biden won amongst Detroiters with 94% of the vote while Trump received 5%. Yet statewide in Michigan voter turnout was 71% and Biden defeated Trump by merely 50.6% to 47.9%, meaning that it was the Black community who, voting as a cohesive group, won the Presidential election for President Joseph Biden in this State and, potentially, the Country.

iii. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group.

This factor weighs in favor of Plaintiffs because, for the last four decades, since the 1980's, a partisan legislature of Detroit has been able to draw districts in conformity with the VRA. That is, each of the voting district plans of Michigan for the last 40 years has had the majority-Black districts that Defendant's Plans now eliminate. Obviously, there was a reason for their creation in 1981, 1991, 2001, and 2011. And the omission of majority-Black districts in the 2021 Plans is glaring.

iv. If there is a candidate slating process, whether the members of the minority group have been denied access to that process.

This factor does not weigh in either direction, as, generally, Michigan does not utilize a candidate slating process and so, Plaintiffs have not had an opportunity to be denied access to it.

v. The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.

The Black citizens of the City of Detroit bear the effects of discrimination in the area of education: In the city of Detroit the majority of the residents in the suburb area are predominantly White, while in the actual city majority of the residents are Black.¹² As of the mid-2000's, school funding per pupil in Wayne County (where Detroit is located) was approximately \$930.33, the lowest in the State. The second highest was \$1,239.47 per pupil, in Macomb County, almost 50% more than that of Wayne County and far below the average for Southeastern Michigan of \$1,807.17.¹³ Detroit public schools have high illiteracy rates and low academic performance compared to cities across the United States, with Detroit "eighth graders scor[ing the] lowest in math and reading in the nation."¹⁴ According to the National Institute for Literacy, 47% (200,000) of adults in Detroit are functionally illiterate, and half of the 200,000 adults do not have a high school diploma or GED, showing that the lack of these skills learned in an academic setting is generationally embedded into different groups of society.

The Black citizens of the City of Detroit bear the effects of discrimination in the area of employment: Detroiters have a lower employment rate compared to others living in Wayne County and those in neighboring counties such as Macomb and Oakland. In July 2020, unemployment in Detroit reached nearly 40 percent.¹⁵ This is much higher than the national unemployment average of even The Great Depression nearly a century ago.¹⁶ As of 2016, Detroit's poverty rate was 35.7%, with a median household income of just over \$28,000.¹⁷

¹² Checkoway, Barry; Lipa, Todd; Vivyan, Erika; Zurvalec, Sue (2017). "Engaging Suburban Students in Dialogues on Diversity in a Segregated Metropolitan Area". *Education and Urban Society*. Sage Journals. 49 (4): 388–402.

¹³ D., Rollandini, Mark. Michigan intermediate school districts: funding and resource allocation. p. 22.

¹⁴ Rosenbaum, Mark (2018-01-30), The Miseducation of America, Center for Political Studies (CPS).

¹⁵ Wileden, Lydia. 2020. "employment Dynamics in Detroit During the COVID-19 Pandemic." *Detroit Metro Area Communities Study*, University of Michigan. <https://detroitssurvey.umich.edu/wp-content/uploads/2020/08/Unemployment-August-2020.pdf>.

¹⁶ Rashawn Ray, Jane Fran Morgan, Lydia Wileden, Samantha Elizondo, and Destiny Wiley-Yancy; Examining and Addressing COVID-19 Racial Disparities in Detroit; The Brookings Institution, p. 14.

¹⁷ Williams, Corey (14 September 2017). "Census Figures Show Drop in Detroit Poverty Rate". U.S. News.

The Black citizens of the City of Detroit bear the effects of discrimination in the area of health: Because of the legacies of underinvestment, redlining, jobs without benefits, poor or nonexistent and culturally incompetent health care, Black residents are less likely to be able to transcend the challenges presented by COVID-19 and are more likely to contract and die from the virus.¹⁸ In Detroit, Black people represent a comparable over 75 percent of known COVID-19 diagnoses by race, yet account for a disproportionate nearly 90 percent of deaths. *Id.*

vi. Whether political campaigns have been characterized by overt or subtle racial appeals.

One does not have to be a political historian to know the racially charged campaigning which has taken place in Michigan. As stated above, until § 4 of the VRA was held unconstitutional (as opposed to § 2, which this action is brought pursuant to), Michigan's Allegan and Saginaw Counties were deemed 'racist' enough to require pre-approval by the federal government of any change to their voting procedure. Further, the entire mayoral campaign and career of Coleman A. Young, the first Black mayor of Michigan's largest city and economic capital, was marred by anti-Black racism and appeals to racist biases amongst Whites.

There can be no question, since the racial tensions raised in this country in recent years (the pushback resulting from the election of the Nation's first Black president, the racial issues raised in the politics and policies of former President Trump, and the protests and riots of race-based police brutality since the murder of George Floyd), that race is still a key component of campaigns in Michigan.

vii. The extent to which members of the minority group have been elected to public office in the jurisdiction.

¹⁸ Rashawn Ray, Jane Fran Morgan, Lydia Wileden, Samantha Elizondo, and Destiny Wiley-Yancy; Examining and Addressing COVID-19 Racial Disparities in Detroit; The Brookings Institution, p. 1.

This factor weights heavily in Plaintiffs' favor as Michigan has never had a black governor nor has there ever been a Black US Senator from Michigan. Further, the Michigan house of representatives has a proportionately less Black representation than the percentage of the Black population in Michigan.

viii. Whether there is significant lack of responsiveness on part of elected officials to particularize need of members of minority group.

The historical examples of the legislatures' unresponsiveness to the needs of the Black community is extensive (see discussion of the Detroit Race Riots and Detroit Rebellion, above). Yet this factor weighs especially heavily in Plaintiffs' favor as of recently, with the immense illustration of the Michigan legislatures indifference to the needs, health, and even safety of Michigan's Black community, as exhibited with the Flint Water Crisis.

The Crisis exposed between 6,000 and 12,000 children in the predominantly Black community of Flint to drinking water with dangerously high levels of lead.¹⁹ Children are particularly at risk from the long-term effects of lead poisoning as it can cause a reduction in intellectual functioning and IQ, and an increased chance of Alzheimer's disease. The Crisis was also the likely cause of a deadly outbreak of Legionnaires' disease.²⁰ Fifteen criminal cases have been filed against local and state officials.²¹ This includes former Michigan Governor Rick Snyder and eight other officials who were charged with 34 felony counts and seven misdemeanors—41 counts in all—for their role in the crisis.²² Two officials were charged with involuntary manslaughter.²³ President Barack Obama declared a federal state of emergency, authorizing

¹⁹ https://www.wnem.com/news/united-way-estimates-cost-of-helping-children-100m/article_25df9e5f-a732-55ba-af76-45dfb9e8223f.html

²⁰ <https://www.freep.com/story/news/local/michigan/2018/05/30/flint-water-crisis-legionnaires-disease-mclaren-hospital/653042002/>

²¹ https://www.mlive.com/news/flint/2016/12/former_state_emergency_manager.html

²² <https://www.nytimes.com/2021/01/14/us/rick-snyder-flint-water-charges.html>

²³ <https://fox40.com/news/national-and-world-news/2-ex-health-officials-charged-with-manslaughter-in-flint/>

additional help from the Federal Emergency Management Agency and the Department of Homeland Security.²⁴

Wherefore, it is undeniable that the Michigan legislature has a history of unresponsiveness (to say the least) to Michigan's Black community, and factor eight weighs heavily in favor of Plaintiffs.

ix. Whether policy underlying challenged practice or procedure is tenuous.

This factor weighs the heaviest of all of the factors in Plaintiffs' favor, and unquestionably puts the totality of the circumstances in favor of granting Plaintiffs' requested relief.

To the uninitiate, drawing up redistricting plans may seem complicated. However, to those who are knowledgeable about it, the process is relatively simple. All 50 states and their subdivisions have been required to comply with the Voting Rights Act since 1965. Michigan's partisan legislature did so when it drew up the redistricting maps in 1981, 1991, 2001, and 2011. But, it is an indisputable fact, that in order to comply with the VRA, one must absolutely have access to, and make use of, current racial demographics and voting information. **By its own admission, Defendant neither had access to, nor made use of, the needed statistical information. Therefore, they could not have complied with the VRA and their Plans are unlawful.**²⁵

The VRA was enacted to ensure that communities of interest, that is, minorities, would have equal opportunity to elect their preferred candidates. It is absolutely crucial to understand

²⁴ <https://obamawhitehouse.archives.gov/the-press-office/2016/01/16/president-obama-signs-michigan-emergency-declaration>

²⁵ <https://www.usnews.com/news/best-states/michigan/articles/2022-01-03/black-lawmakers-to-sue-to-block-michigan-redistricting-maps> [An expert hired by Defendant also admits that they were lacking the proper data regarding Black voters in Michigan when they drew up the Plans: "Lisa Handley, one of the commission's experts... noted a lack of data to discern how Black candidates may be affected by white voters in primaries, which decide many races."]

that this does not mean the final nominee of the minority's preferred political party. So, just because the Black community of Michigan overwhelmingly votes for Democrat candidates, that does not mean that any and all Democrat candidate is the Black community's preferred candidate. Michigan's Black community often prefers different candidates than their White Democrat counter-parts, as is their right. But without majority-Black districts, none of those Black-preferred Democrat candidates will make it through the primaries to a general election. And when the Black Democrats are forced to vote for a Democrat candidate that was not their preferred candidate, they are not truly achieving fair representation. **Therefore, one cannot look only to general election polling data in drawing up redistricting plans; One is required to look at primary election data.** Exhibit A, Affidavit of Elections Expert Ed Sarpolus.

Yet Defendant looked only at general election data. In fact, Defendant's expert's report admits that absolutely no primary election data was used in drawing its conclusions. "The tables above consider only general election contests." Report of Dr. Lisa Handley, pp. 23-24 (emphasis added).²⁶ **Accordingly, Defendant's expert report draws the absolute wrong conclusion regarding the percentage of Black voting age population ("BVAP") it would take for the Black community to elect their candidates of choice. "However, in no county is a 50% BVAP district required for the Black-preferred candidates to carry the district in a general election." Id. pp. 20-21 (emphasis added). Without having reviewed any primary election data, Dr. Handley could not have known whether a candidate in a general election was the Black-preferred candidate, as that candidate may have been out-voted in their primary election. Therefore, Defendant's expert and Defendant can absolutely not be said to have drawn up**

²⁶ Available at https://www.michigan.gov/documents/micrc/Handley_Final_Report_to_MICRC_with_Appendices_744723_7.pdf

their redistricting Plans in a way that gives due consideration to the Black community of interest.

Defendant's closed door meeting notes (which this Court forced them to make public, in accordance with the law) reveals that they did, in fact, base their redistricting on the above-described fallacy. Below is a quote from an individual at one of the Defendant's more recent closed door meetings:

...in order to determine if there is racial bloc or racially polarized voting. If there is, what is the remedy for that. The remedy is also informed by Dr. Handley's conclusion of the VAP the Voting Age Population that's required, or that she has concluded, minorities need to elect a candidate of choice. That's key. Because rather than just assigning numerical numbers and talking about a district – I read the other day that someone suggested that well why don't they just create districts that are 55% to 58% Black. Well, what's the basis for that? Dr. Handley's analysis does not include that. And we've never recommended that an arbitrary percentage of minority voters is needed to comply with the Voting Rights Act.

Michigan Independent Redistricting Committee Closed Door Meeting Minutes, October 27, 2021, at 15:20.

...the public has been insistent that these are VRA violations. [But] Dr. Handley has determined through analysis the VAP that's needed to elect [Black-preferred candidates] in these areas. Packing districts would be problematic but we're not talking about that because we're not taking about [the] VRA. I didn't mention race at all. Communities that were split in the black community have that same commonality as the area from Flint. We want to keep or community whole. **Our analysis is that we met those thresholds.** This [] about keeping neighborhoods whole. This isn't a VRA issue *per se*. if the VAP [in the proposed Plans] was 20% then yes that's some[thing] that we need to address but that's not where we are. So, these comments about VRA § 2—**no one has said that these thresholds are incorrect.** They may want them to be different or higher but no one says that our analysis is that VAP should be 48.9%. No one has said that and that's [a] telling omission. It's not a VRA Issue. The VRA doesn't require [a] numerical percent, only ability and opportunity to elect. Period.

Id. at 28:53 (emphasis added).

The above quotes are Defendant explicitly stating that 1) they used the wrong data, 2) which indicated a much lower Black voting age population was required in any given district for Blacks to elect their preferred candidate, and 3) despite being told 'insistently' at public comments

sessions that their redistricting plans unlawfully diluted the Black vote in violation of § 2 of the Voting Rights Act, Defendant stubbornly maintained that the Blacks could elect their preferred candidates in districts where they were not the majority VAP. In reality, Black voters are often required to be well over 50%, and even into the 60%'s in a district in order to elect their preferred candidate because, often times, Black communities are also impoverished and, as such, have a much lower voter turnout. **Exhibit A, Affidavit of Election Expert Ed Sarpolus.**

In Michigan, a Black Voting Age Population of well over 51% is required for the Black preferred candidate to be elected (getting past the primary) in a general election. *Id.* Defendant's Plans have zero US Congressional districts with 51% or more Black population, zero Michigan Senate districts with 51% or more Black population, and have halved the Michigan House districts with a 51% or more Black population.

Wherefore, Defendant Plans unquestionably violate the Michigan Constitution as they violate the Voting Rights Act of 1965.

II. The traditional factors of equity all strongly favor awarding Plaintiffs the injunctive relief requested in their Complaint.

a. Plaintiffs' requested injunction should be granted as Plaintiffs are all but certain to succeed on the merits of their claim.

As explained just above, Defendant has so blatantly violated the Michigan Constitution and § 2 of the Voting Rights Act of 1965. Defendant has admitted as much in their meeting minutes. It is clear that there was either a feigned or willful ignorance of the law on Defendant's part, or a genuine misunderstanding of it. Either way, in the end, the proposed Plans fail to comply with State and federal law, and further briefing can only bear this out. Defendant simply does not have a legal leg to stand on.

b. Plaintiffs' requested injunction should be granted as the Black community of Michigan, and therefore of the United States, will imminently suffer

irreparable harm should an election be allowed to take place utilizing Defendant's current discriminatory Plans.

Should Defendant's be allowed to go forward with their redistricting Plans, the Michigan Constitution and the Voting Rights Act of 1965 will be violated, specifically with respect to Michigan's Black community of interest. It goes without saying that Michigan's Black community's loss of the opportunity to elect their preferred candidate over the next decade is an irreparable (and deplorable) harm that must not be inflicted upon Plaintiffs, and the Black community of Michigan.

c. Plaintiffs' requested injunction should be granted as doing so risks no harm to Defendants while failure to do so will lead to a grave and irreparable harm to Michigan's Black community.

A knowledgeable expert could redraw Defendant's three Plans to conform to the Michigan Constitution and Voting Rights Act, without changing the vast majority of their districts, in a matter of hours. The cost, would be miniscule. Defendant's would essentially suffer no harm.

d. Plaintiffs' requested injunction should be granted as public policy absolutely favors the prevention of the dilution of the Black community's vote in Michigan.

The American Civil War ended in 1865. Five years after the United States' deadliest war, the Fifteenth Amendment to the United States Constitution was ratified. The Fifteenth Amendment, in theory, ensured Blacks would have the same opportunity for political representation as non-Blacks. Yet the fight for Black suffrage was not so easily won. 100 years later, the United States Senate had determined that enforcement of the Fifteenth Amendment was failing and passed the Voting Rights Act of 1965 in an effort to finally ensure that minorities in the United States would have access to our most basic of rights, political representation. In 2018, the Voting Rights Act was incorporated into the Michigan Constitution as part of the amendment that created Defendant.

There can be no question that public policy favors ensuring that any deficiency in upholding the right of Blacks to be able to elect their chosen representatives be corrected now, prior to Defendant's flawed and discriminatory Plans taking effect.

III. This Court should grant Plaintiffs' requested declaratory relief as, otherwise, Defendant shall be emboldened to violate the constitutional rights of all Black Michiganders, causing them disgraceful and irreparable harm.

a. A case of actual controversy exists between the parties.

“An actual controversy exists when a declaratory judgment is needed to guide a party’s future conduct in order to preserve that party’s legal rights.” *League of Women Voters of Michigan v Secy of State*, 506 Mich 561, 586; 957 NW2d 731 (2020). Here, Plaintiffs have made a showing that, should any of Defendant's three Plans be implemented, Plaintiffs will suffer unlawful vote dilution in violation of their constitutional and federal rights. Defendant will undeniably go forward with their Plans should this Court fail to make a declaration of their unlawfulness. Wherefore, Plaintiff meets the first criteria for obtaining declaratory relief.

b. The actual controversy is within the court’s jurisdiction.

Plaintiff meets the second criteria for obtaining injunctive relief by virtue of the Michigan Constitution of 1963, art. 4, §6(19), which grants this Court original jurisdiction over all challenges to the Michigan Independent Redistricting Commission.

Wherefore, this Court should grant Plaintiffs' request for a declaratory judgment.

CONCLUSION AND RELIEF REQUESTED

The Independent Redistricting Commission was approved in 2018 when it was voted into law. In mid-2021, its members were selected. The Commission received funding to the tune of approximately \$800,000. It was not until December of 2021 that the Commission finished its job in designing three redistricting maps; one for the US Congress, one for the Michigan Senate, and one for the Michigan House of Representatives.

In those months, Defendant hired a single expert, a Doctor Lisa Handley, to provide them with a report analyzing vote and demographics data. It was widely reported that "Lisa Handley, one of the commission's experts... noted a lack of data to discern how Black candidates may be affected by white voters in primaries, which decide many races."²⁷ The data that Dr. Handley did not use was certainly available to her. It was available publicly online. As well, a phone call could have been made to the then Wayne County Clerk, Cathy Garrett, who would have been able to provide that information. Whatever the reason, Defendant's expert's report was catastrophically flawed, and the fruit of that poisonous tree are equally flawed.

Plaintiffs, in asking this Court to uphold their right to political representation in this country and state, are not asking for much. A competent election expert and consultant could redistrict all three of Defendant's Plans in a matter of hours. Such a small price to avoid such a grave injustice leaves little room to wonder at the correct course.

WHEREFORE, Plaintiffs request that this Honorable Court enter judgement in their favor against Defendant and issue an order containing the following relief:

- a) Declaring that Defendant's currently proposed redistricting plans violate the Michigan Constitution of 1963, art 4, §6(13)(a) and (c) and the Voting Rights Act of 1965 by impermissibly diluting the Black voting power in Michigan;
- b) Ordering that Defendant be required to redraw their redistricting plans in accordance with the Michigan Constitution of 1963, art 4, §6(13)(a) and (c) the order of this Court;
- c) Awarding reasonable attorneys fees pursuant to Michigan Constitution of 1963, art 4, §6(5), (13)(a), and 52 U.S.C. § 10310(e); and

²⁷ <https://www.usnews.com/news/best-states/michigan/articles/2022-01-03/black-lawmakers-to-sue-to-block-michigan-redistricting-maps>

- d) Any and all such other relief that this Court deems just and equitable including any tolling of limitations periods necessary to accomplish justice.

Respectfully submitted;

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Dated: January 10, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on this date I filed the foregoing paper and any attachments with the Clerk of Courts for the Michigan Supreme Court using the MiFile electronic filing system, as well as the following parties at the following addresses:

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Respectfully submitted;

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